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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER				
HOFFMAN, SUSAN COE				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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APPLICATION NO. / CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10564661	9/19/06	YAN ET AL.	5706-000002/US/NP

EXAMINER

Susan Coe. Hoffman

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Commissioner for Patents

The amendment filed on May 22, 2008 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because the original claims were drawn to "use" type claims. As discussed in paragraph 5 of the previous Office action, it was unclear if "use" indicated a composition or a method. Since this was unclear the claims were examined as composition claims. The newly submitted method claims are considered to be directed to an invention that lacks unity with the composition claims because the composition can be used for a different purpose such as treating psoriasis as demonstrated by US Pat. No. 5,466,452. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. See 37 CFR 1.142(b) and MPEP § 821.03. Thus, to amend the claims to recite only method claims rather than composition claims is improper and non-responsive.

Applicant's arguments regarding the earlier Notice of Non-responsive Amendment mailed April 23, 2008 have been fully considered but are not persuasive. The first office action on the merits clearly set forth how the claims were being examined. "Great uncertainty" did not exist. Two possible interpretations were possible and the examiner clearly indicated how the claims were interpreted. This procedure follows what is set forth in MPEP section 2173.06. It is improper for applicant to attempt to switch the examined claims to a different category of invention especially when the method claims lack unity with the composition claims.

Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

/Susan Coe Hoffman/
Primary Examiner, Art Unit 1655